

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 6002(b) of the)	
Omnibus Budget Reconciliation Act of 1993)	WT Docket No. 09-66
)	
Annual Report and Analysis of Competitive)	
Market Conditions With Respect to Mobile)	
Wireless including Commercial Mobile)	
Services)	

NTELOS Comments

NTELOS is pleased to be able to offer its perspective on the very important questions raised by the Commission in this Notice of Inquiry. As described below, NTELOS has had numerous successes as regional wireless carrier -- growing its wireless business, transforming its network with broadband, introducing new services, and offering its customers innovative plans that make wireless affordable. Yet the recent consolidation in the wireless industry has given the large carriers -- particularly Verizon Wireless and AT&T -- the power to harm regional carriers such as NTELOS. In addition to mergers, the largest wireless carriers were very successful in the two most recent major spectrum auctions, securing significant rights to frequencies in the 700 MHz and 1.7/2.1 GHz bands.

In our industry, the FCC depends heavily upon competition to achieve the mandates of the Communications Act and to ensure that the public interest is served. Consequently, the issues raised in this proceeding about whether the FCC has an accurate picture of the competitiveness of the industry are vitally important. NTELOS certainly believes that, as an industry, we are facing a threat to wireless' workably competitive structure.

NTELOS does not have all of the answers and it does not have the resources to produce comprehensive quantitative information on the wireless marketplace. However, NTELOS believes that insight into the challenges faced by a regional carrier operating in rural markets will be helpful to the FCC as it considers the issues raised in the NOI.

I. NTELOS

NTELOS holds PCS licenses to operate in twenty-nine basic trading areas with a total licensed population of approximately 8.8 million. NTELOS has built out its network in twenty of those basic trading areas and covers over 5.5 million POPs. NTELOS now serves over 440,000 retail wireless subscribers representing approximately 8% penetration of NTELOS' total covered population. In 2006, NTELOS acquired seven Advanced Wireless Services (AWS) licenses in western Virginia. These AWS licenses are 20 MHz each and are located in the Roanoke, Lynchburg, Giles, Bedford, Charlottesville, Bath, and Highland CMAs.

NTELOS began acquiring PCS spectrum in western Virginia and West Virginia in the mid-90s and introduced service in western Virginia in late 1997, in West Virginia in late 1998, and in eastern Virginia (Richmond, Hampton Roads, Norfolk, Virginia Beach) in 2000. It is significant to note that most of NTELOS' PCS Spectrum was acquired after the first auction in partitions from Primeco (in western Virginia) and from GTE (in West Virginia). Both these entities are now part of Verizon Wireless. The larger carriers sold their entire PCS spectrum holdings in these markets to NTELOS. It was clear at the time that they were focused on the urban areas and were not interested in building out a rural geography. NTELOS, on the other hand, has been steadily building out mountainous and relatively sparsely populated communities in Virginia and West Virginia for many years.

NTELOS continues to make significant investments in its wireless network. During 2008, NTELOS added 160 new wireless sites to end the year with a total of 1,183 cell sites. As of June 30th, we have added 24 more sites in 2009. Year-after-year, NTELOS builds out sites for more complete network coverage, improved call reception and enhanced in-building service.

NTELOS has 84 company-owned retail stores, many more than its competitors have in NTELOS' region. NTELOS supplements its company-owned distribution channels with 115 agents with a total of 285 retail locations where NTELOS wireless products and services are sold. NTELOS serves its customers through customer care centers that are all located in western Virginia. NTELOS' retail presence through its stores, along with these call centers in Waynesboro, Covington, and Daleville Virginia, demonstrate NTELOS' long-standing commitment to be a part of local communities it serves.

In August of 2007, NTELOS announced that it would upgrade virtually its entire network for mobile broadband services using EVDO Rev. A. EVDO data services are at speeds 10 times faster than those available on NTELOS' 1x data network – the wireless equivalent of moving from dial-up to DSL. In order to accomplish the EVDO upgrade, NTELOS undertook the largest capital expenditure in its 112-year history. NTELOS completely replaced the wireless switches in its western Virginia and West Virginia networks; upgraded the existing switches in eastern Virginia; and changed out equipment at over 1,000 cell sites. In 2008, NTELOS completed the EVDO deployment in western Virginia and West Virginia. On July 9, 2009, NTELOS announced the completion of the EVDO broadband upgrade in its Virginia East market, including Richmond, Hampton Roads, Norfolk, and Virginia Beach. The multi-million dollar investment in broadband means faster download speeds of large, graphic-rich files, ringtones, music and games and quicker functioning Smartphones and BlackBerrys.

NTELOS offers a wide array of voice and data plans to meet the specific needs of each of its customers. Plans that offer unlimited calling on the NTELOS' network are available to both prepay and postpay customers. NTELOS also offers national plans to all of its customers -- prepay and postpay -- featuring nationwide long distance and no roaming via buckets of daytime, mobile-to-mobile, and night and weekend minutes. Customers can choose from a variety of added-value features like integrated voicemail and data services such as location-based services, text and picture messaging, games, ring-tones, ring-back tones, news, entertainment and hundreds of BREW applications.

In June of 2009, NTELOS introduced the most affordable unlimited prepaid calling plan in its region. NTELOS' new Frawg Unlimited Wireless service offers unlimited, anytime calling starting at just \$30 a month without a contract, credit check, or activation fee. Customers can choose from a variety of phones as well as a range of Frawg plans, including plans with unlimited text messaging and data usage.

II. Handsets and Devices

Although NTELOS offers a wide range of plans and services, a critical part of customers' buying decision is based on the handsets that NTELOS can offer them. Consumers are bombarded by advertisements from the larger carriers touting the benefits of exclusive handsets. Although NTELOS offers handsets with similar features, it is an uphill battle to convince consumers to try handsets other than those that are heavily advertised. Consequently, even with very competitive rate plans and services, NTELOS loses a significant number of sales opportunities because we are unable to offer the exclusive handsets.

Because of the way that the national carriers do the software programming on their exclusive handsets, customers who own those handsets have difficulty activating those handsets on other networks. This situation compounds the difficulty that smaller carriers have in attracting customers from the national carriers. NTELOS has introduced a capability to “unlock” handsets that its customers have purchased from other carriers, but even the best unlocking software is ineffective on a number of the exclusive sets. Data services do not work on unlocked handsets – and in a broadband world, that is a major drawback.

NTELOS finds that the handset issues go beyond the problem that exclusive models are unavailable to regional carriers or their customers. CDMA handset manufacturers program one of three versions of software into each handset they make. One version is proprietary to Verizon; one version is proprietary to Sprint; and the third version of the software is used by all the remaining CDMA carriers. The recent consolidation of the industry has resulted in the disappearance of Western Wireless, RCC, Dobson, Suncom, ALLTEL, and, prospectively, Centennial and Virgin Mobile from the marketplace. With consolidation comes a concern that handset manufacturers will decide it is not worth their while to develop the third version of the handset software for new devices. This could have a devastating affect on smaller carriers’ ability to offer handsets with the newest features and technology.

NTELOS and other small CDMA carriers work diligently to obtain state-of-the-art handsets at reasonable prices. NTELOS, for example, has joined with a number of CDMA carriers in the Associated Carrier Group (ACG), a buying consortium that aggregates the handset demand from its members in order to obtain a wider range of handsets and at better volume prices than any of the ACG members could obtain individually. Still, the ACG aggregated demand is dwarfed by the demand of any one of the national carriers. ACG has gone to great

lengths to develop relationships with handset vendors, including sending ACG representatives from the member companies to Korea to meet with handset manufacturers headquartered there. Still, it is a constant struggle to obtain handsets that can compete with those offered by the national carriers.

III. Roaming

The effect of recent acquisitions has been to change the wireless market from one in which a number of mid-tier regional and rural carriers were vying to become major competitors – thereby assuring consumers of many competitive choices in a healthy marketplace – to one in which a very few gigantic entities enjoy unquestioned dominion and are able to exercise their power in the roaming market. The anti-competitive stance taken by national carriers on roaming has a direct and detrimental affect on the market for local retail wireless services. NTELOS offers plans with nationwide coverage in order to be competitive with carriers that have national networks. With only a regional network, NTELOS relies on reasonable roaming arrangements as a vital input to its national plans. Without roaming, NTELOS cannot effectively compete in the retail marketplace – and sources for those critical roaming services are getting scarce.

In ALLTEL/Verizon merger proceeding, Verizon indicated that roaming prices had fallen to roughly \$0.05 -- and that Verizon provides Sprint with low roaming rates and volume discounts. If prices have fallen to that level, one can be confident that Verizon's costs are below that amount. Verizon and TracFone announced an agreement for TracFone to use Verizon's network for TracFone's "Straight Talk" product. While these two carriers have not revealed the price TracFone pays for using the Verizon network, the retail price for Straight Talk strongly indicates that Verizon is charging TracFone close to Verizon's cost. Confidentiality provisions in its roaming agreements prevent NTELOS from revealing the pricing in its Verizon roaming

agreement, it is very different from the \$0.05 quoted by Verizon in the ALLTEL proceeding. In that proceeding, NTELOS and other non-national carriers urged the FCC to require Verizon and ALLTEL to provide copies of all of their roaming agreements so that the Commission could see the basis for concerns about unreasonable and discriminatory treatment on roaming. The FCC declined to review the roaming agreements as part of that proceeding. The Commission should undertake that review now. Unless it does so, it is difficult to understand how the FCC can make informed decisions on roaming issues.

With NTELOS' significant investment in EVDO, broadband data roaming is a critical need. NTELOS' roaming agreement with ALLTEL provided for such data roaming. Verizon, on the other hand, had refused to consider broadband data roaming for NTELOS' customers. Although the four year commitment offered by Verizon for honoring ALLTEL roaming agreements is not long enough, NTELOS believed that Verizon would honor the terms of NTELOS' roaming agreement with ALLTEL on broadband data roaming. NTELOS was naïve and, as the Commission knows, Verizon is objecting to honoring the non-price terms of ALLTEL roaming agreements. Broadband is now the norm in our industry, making data roaming absolutely vital to regional carriers like NTELOS.

IV. Distribution Channels

NTELOS has had years of experience with the large carriers locking up prime retail locations in malls and strip malls with leases that grant them exclusivity for selling wireless products and services. The "big box" stores sell national carriers exclusively and will not consider regional carriers. However, Verizon has recently presented NTELOS with a new challenge.

NTELOS' largest sales agent offered its customers NTELOS products and services as well as the products and services of ALLTEL. Shortly after Verizon acquired ALLTEL, Verizon gave that sales agent an ultimatum. Either sell exclusively for Verizon or Verizon would terminate the agent. The agent had no choice but to stop selling for NTELOS effective July 1, 2009. Yet that agent would have been happy to continue to sell the products of both carriers – and had a demonstrated history of being able to do so. Another of NTELOS' agents will stop selling for NTELOS effective October 1st because the agent has entered into an agreement with Verizon. Once again, it is Verizon which is insisting that the agent sell exclusively.

NTELOS has worked hard through the years to develop a network of smaller agents and to find viable locations for its own retail stores. Losing agents, with which NTELOS had a relationships going back many years, because of Verizon's exclusivity requirement is very discouraging to NTELOS.

V. Spectrum

In past competition reports, the Commission consistently recognized the key role of the mid-tier regional and rural carriers in the marketplace.¹ In recent spectrum auctions, these carriers have effectively been denied the opportunity to obtain the additional spectrum they vitally need in order to grow their business and remain viable competitors. For example, in Auction 73 (700 MHz auction), AT&T and Verizon ended up with about \$16 billion of the nearly \$19 billion of spectrum purchased.

Mid-tier regional and rural carriers cannot remain vigorous competitors if their ability to grow and develop is choked off by a lack of meaningful access to spectrum. NTELOS' average spectrum holdings are only 23 MHz and, in the eastern Virginia markets (the most competitive and populated served by NTELOS), it has only 20 MHz of spectrum. In contrast, Verizon has

¹ See, e.g., *Wireless Competition Twelfth Report* at para. 18-19.

over 90 MHz of spectrum in the eastern Virginia markets, including the A and B Block cellular licenses as well as 700 MHz licenses. In recent auctions, NTELOS was quickly priced out of the eastern Virginia markets by the large carriers.

The cellular licenses, along with the recently auctioned 700 MHz licenses, are the optimum spectrum ranges for delivering mobile wireless services. The national carriers, and especially Verizon and AT&T, have the lion's share of this "beachfront property" spectrum, leaving regional and smaller carriers like NTELOS to compete using PCS and AWS band spectrum. The PCS bands used by NTELOS have inferior propagation characteristics in comparison to cellular and 700 and so require significantly more cell sites to achieve the same coverage and quality. NTELOS has had to work to overcome this disadvantage as it built out the mountainous regions of Virginia and West Virginia. In-building penetration is more challenging in the PCS spectrum ranges, which is a critical factor as more and more customers "cut the cord" and so rely on their mobile phone service in their homes and offices.


The disparity in spectrum holdings between the smaller carriers and the national carriers is a strategic disadvantage for NTELOS and similar carriers, making us more and more vulnerable over time. Wireless vendors develop applications, features, and services based primarily on the estimated demand of the large carriers. Verizon has over 85 MHz of spectrum in almost all metropolitan areas in the United States. To the extent that the carriers which drive the development of new capabilities are not spectrum constrained, developers are free to create new services without regard to the amount of spectrum needed to deploy those services. NTELOS, with an average of only 23 MHz of spectrum, fears it will be unable to keep pace with customer demand for services that use large amounts of spectrum. With the recent announcements by large carriers of their 4G deployment plans, NTELOS' fears have been

heightened. It is far from clear that NTELOS and other smaller carriers will be able to match the large carriers' 4G deployment given the disparity in spectrum holdings.

Conclusion

The issues raised by the Commission in this docket are of great importance to the continued competitiveness and evolution of the wireless industry in this country. NTELOS urges the FCC to focus on the substantial barriers to entry and growth that are becoming the hallmarks of our industry for smaller carriers.

Respectfully submitted,

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September 30, 2009